

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REMOH GARRY,

Plaintiff

v.

BEAN, et al.,

Defendants

Case No.: 2:23-cv-01655-GMN-EJY

Dismissal Order

Plaintiff Remoh Garry ("Plaintiff") brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison ("HDSP"). (ECF No. 6 at 1.) The Court filed the screening order on April 29, 2024, and ordered Plaintiff to file an amended complaint by May 29, 2024. (ECF No. 5 at 8–9.) The Court warned Plaintiff that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.*) That deadline expired, and Plaintiff did not file an amended complaint, move for an extension, or otherwise respond.

I. Discussion

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th

1 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
2 dismiss an action on one of these grounds, I must consider: (1) the public's interest in
3 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk
4 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
5 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*
6 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal*
7 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

8 The first two factors, the public's interest in expeditiously resolving this litigation
9 and the court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing
12 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires me to consider whether less drastic alternatives can be
16 used to correct the party's failure that brought about the court's need to consider
17 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
18 that considering less drastic alternatives *before* the party has disobeyed a court order
19 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
20 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
21 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
22 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
23 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).

Courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and unless Plaintiff files an amended complaint, the only alternative is to enter a second order setting another deadline. But the reality of repeating an ignored order is that it often only delays the inevitable and squanders the Court’s finite resources. The circumstances here do not indicate that this case will be an exception: there is no hint that Plaintiff needs additional time or evidence that he did not receive the screening order. Setting another deadline is not a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

II. Conclusion

Having thoroughly considered these dismissal factors, I find that they weigh in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on Plaintiff’s failure to file an amended complaint in compliance with this Court’s April 29, 2024, screening order. The Clerk of Court is directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his claims, he must file a complaint in a new case and provide the Court with his current address.

Finally, I order that the application to proceed *in forma pauperis* (ECF Nos. 1) is denied as moot.

Dated: June 4, 2024



Gloria M. Navarro, Judge
United State District Court